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February 22, 2002 LB 823, 824

year, too, but it...it was with regard to civil actions in the cases of harm to the viable fetus, was the terminology she used in those bills. The bills did not ever advance, I don't think, from committee. At least they...they never made it into law. And it occurs to me, or...I mean, I guess the question arose in my mind, do we, by passing a piece of legislation that affects the criminal statutes, do we also, then, impact civil law? Do we...through this, are we able to say to a parent who has lost a fetus, or an unborn child in this instance, are we able to say to them, oh, yes, you can go to court and you can ask for civil damages. And I'd like Senator Brashear to maybe share with me the thoughts that he had earlier today with this, if you would, Senator.

SENATOR BRASHEAR: Yes, Senator Schimek. Specifically, LB 824 is a...we are criminalizing the homicide involving an unborn child. That is criminal. On the civil side of the law, we have a statute, 30-809 of the Nebraska Revised Statutes, which provides for whenever the death of a person, and it's the wrong...it's what we call the Wrongful Death Statute, in order to achieve...if we were going to establish the civil cause of action to include an unborn child in utero, we would do it in the form of LB 823, which is pending and has been since last session, in the Judiciary Committee. So in other words, I'm...I'm indicating to you that we are creating a criminal cause of action with regard to the death of an unborn child, the homicide involving an unborn child. We are not altering the civil cause of action relating to wrongful death in the state of Nebraska, which is a creation of this Legislature and is a matter of statute, and that is not at issue here.

SENATOR SCHIMEK: Thank you, Senator Brashear. I...I did want the body to think about that because in...in reality, I think that might...

SPEAKER KRISTENSEN: One minute.

SENATOR SCHIMEK: ...almost be a better approach then affecting the criminal statutes, that people may have more opportunity through the civil statutes. But I...I appreciate your thinking about this and sharing that information with us. That was my